

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ABDIAS ROSALES,

Plaintiff,

v.

CITY OF TYLER, TEXAS, et al.,

Defendants.

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Case No. 6:23-cv-245-JDK

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Before the Court is Defendants the City of Tyler, Chief Jimmy Toler, Officer J. Hebert, Officer S. Black, Officer S. McGregor, Officer T. Sipes, Officer J. Utely, and Officer A. Thomas's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). Docket No. 4. The Court referred the motion to United States Magistrate Judge John D. Love for findings of fact, conclusions of law, and a recommendation for disposition. Docket No. 15.

On September 13, 2023, Judge Love issued a Report and Recommendation recommending that the Court deny Defendants' motion in part and deny Defendants' motion in part. Docket No. 16. Specifically, Judge Love recommended denying the motion as to Plaintiff's Fourth Amendment claims against Defendant Thomas and granting the motion and dismissing with prejudice any Fourth Amendment claims asserted against Defendants Utley, Sipes, and Black. *Id.* at 8–10. Judge Love also recommended dismissing Plaintiff's failure-to-train claims against Defendants Toler

and the City of Tyler but allowing Plaintiff to amend those claims. *Id.* at 10–13, 16. Finally, the Magistrate Judge found Defendants’ assertion of qualified immunity at the motion to dismiss stage to be meritless and recommended that the stay of discovery in this case be lifted. *Id.* at 16–17. No objections to the Report were filed and the time period for filing objections has passed.

This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Here, no party filed objections in the prescribed period. The Court therefore reviews the Magistrate Judge’s findings for clear error or abuse of discretion and reviews the legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”).

Having reviewed the Magistrate Judge’s Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 16) as the findings of this Court.


Defendants' motion (Docket No. 4) is **DENIED** as to Defendants' request to dismiss Plaintiff's Fourth Amendment claims against Officer Thomas and **GRANTED** as to any Fourth Amendment claims asserted against Defendants Officer Utley, Officer Sipes, and Officer Black. Plaintiff's Fourth Amendment claims asserted against Defendant Officer Utley, Defendant Officer Sipes, and Defendant Officer Black are **DISMISSED** with prejudice.

Defendants' motion is **GRANTED** as to Plaintiff's failure-to-train claims against Defendants Chief Toler and the City of Tyler. However, Plaintiff is **GRANTED** leave to amend his complaint with respect to the failure-to-train claims. Plaintiff shall file any amended complaint by **October 20, 2023**. If Plaintiff timely amends his complaint, Defendants shall respond in accordance with the Federal Rules of Civil Procedure.

Finally, the stay of discovery in this case (Docket No. 14) is **LIFTED**.

Signed this

Oct 4, 2023



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE